Image Project Order File Cover Page

XHVZE

This page identifies those items that were not scanned during the initial production scanning phase. They are available in the original file, may be scanned during a special rescan activity or are viewable by direct inspection of the file.

0 017 Order File Identifier

Organizing (done) ☐ Two-sided ☐ Rescan Needed

RESCAN

☐ Color Items:

☐ Greyscale Items:

☐ Poor Quality Originals:

☐ Other:

DIGITAL DATA

☐ Diskettes, No.

☐ Other, No/Type:

OVERSIZED (Scannable)

☐ Maps:

☐ Other Items Scannable by a Large Scanner

OVERSIZED (Non-Scannable)

☐ Logs of various kinds:

☐ Other::

NOTES:

BY: Angela Joseph Date: 12-17-14 /s/ JES

Project Proofing

BY: Angela Joseph Date: 12-17-14 /s/ JES

Scanning Preparation ______ x 30 = ______ + ______ = TOTAL PAGES 61
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BY: Angela Joseph Date: 12-17-14 /s/ JES

Production Scanning

Stage 1 Page Count from Scanned File: 62 (Count **does** include cover sheet)

Page Count Matches Number in Scanning Preparation: ✓ YES ______ NO

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BY: Angela ______ Date: /s/

Scanning is complete at this point unless rescanning is required.

ReScanned

BY: Angela ______ Date: /s/

Comments about this file: Quality Checked

INDEX OTHER ORDER NO. 97

Draft Regulations
Bonding

1.	February 28, 2005	House Bill 2416
2.	--------------------	Rocky Mountain Mineral Law Institute's Forty-Fifth Annual
3.	--------------------	Emails re: Operator Bonding/GRI Wells
4.	September 13, 2005	Thank-you letter from AOGCC to Oil and Gas Commission of Arkansas re: copies of the Arkansas Legislation
5.	April 20, 2006	Letter from AOGCC to Legislative Assistant to Congressman Don Young re: Environmental Risks from Orphaned Oil and Gas Wells

INDEX OTHER ORDER NO. 97

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA OIL AND GAS
CONSERVATION COMMISSION

333 W. 7TH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-3539
PHONE (907) 279-1433
FAX (907) 276-7542

April 20, 2006

VIA FACSIMILE (202) 225-0425

Matthew Hite
Legislative Assistant to Congressman Don Young
2111 Rayburn HOB
Washington D.C. 20515

Re: Environmental Risks from Orphaned Oil and Gas Wells

Dear Matthew,

As a follow up to our phone conversation, we are writing to ask for Congressman Young's help to secure prioritized funding for the orphaned and abandoned oil and gas well program authorized by Section 349(g) and (h) of the Energy Policy Act of 2005. This funding will be used to assist states, on a matching basis, to permanently plug orphaned and abandoned wells on state and private land.

The Interstate Oil & Gas Compact Commission ("IOGCC") is coordinating efforts nationally to help all of the states identify and properly plug orphaned or abandoned wells on all non-Federal lands. Alaska is a leader among the oil and gas producing states, and we would be very appreciative if Congressman Young would join Oklahoma Congressman Dan Boren in signing the attached "Dear Colleague Letter." Our goal is to gain support for a $10,000,000.00 appropriation in FY 2007 to enable the states to begin attending to these orphaned and abandoned wells.

In Alaska, we have several old abandoned wells on private land. The Alaska Oil and Gas Conservation Commission is conducting an inventory of all such wells and developing a plan for permanently plugging them in a safe and environmentally responsible manner. Therefore, this program will have direct benefits for Alaska. We will be seeking state funding to match any Federal funds made available to us for this purpose.

Additionally, there are about 382 idle or abandoned wells on Federal lands, 128 of which are in the National Petroleum Reserve – Alaska. Some are in unstable condition and pose a continuing threat to the environment. Most of these are wells that were drilled prior to statehood. It is our intention to work with the BLM to ensure that all of these old wells are also properly plugged and abandoned.

The IOGCC continually provides valuable assistance to the State of Alaska in many ways. Recently this respected national organization adopted and then reauthorized a Resolution urging Congress and the President to open the Coastal Plain of ANWR to hydrocarbon exploration and development. For your information we are enclosing a copy of that Resolution (IOGCC Resolution 05.093.) We would like to do our part and support the work of the IOGCC when its projects are aligned with Alaska's best interests, as they almost always are.

We thank Congressman Young for meeting with us when were in Washington D.C. in March and for agreeing to consider this request. I will call on Monday to check on the status of this matter. In the meantime, if you have questions please do not hesitate to call.

Sincerely,

John K. Norman
Chairman

Encl.

cc: Commissioner Daniel T. Seamount
Commissioner Cathy Foerster

DRAFT

Help States Eliminate Environmental Risk From Orphaned Wells

April ___, 2006

Dear Colleague:

Please join us in contacting the Chairman and Ranking Member of the Appropriations Subcommittee on Energy and Water to request them to prioritize funding for a program authorized in Section 349 (g) and (h) of the Energy Policy Act of 2005 to assist states, on a matching basis, in permanently plugging orphaned oil and natural gas wells on state and private land.

Orphaned wells are oil and natural gas wells which were for the most part drilled in the years before effective State regulation of oil and natural gas production and for which there is no identifiable party to hold financially responsible for well plugging. In most States that had early production of oil and natural gas there are still significant numbers of these older "orphaned" wells which, until properly plugged, have the potential of leaking oil or salt water and polluting fresh water sources. While states have limited funds to plug orphan wells, supplementing these funds will accelerate the effort to address this century-old problem. The goal of this program is to ensure adequate funding over a 5 - 10 year period to allow states to plug most, if not all, remaining orphaned wells in the United States.

Congressionally chartered in 1935, the IOGCC is the largest compact of states and represents the regulatory and policy interests of the nation's petroleum producing states. The IOGCC is an effective and strong advocate of the states on oil and gas issues. The IOGCC would serve as the conduit through which these funds would be directed to states for this critical work.

We encourage our colleagues to join us in urging appropriators to support a $10 million appropriation in fiscal year 2007 to the Interstate Oil and Gas Compact Commission to enable states to carry out the first year of this most important environmental program. If you would like to co-sign the attached letters please contact _______ with Congressman _____ at 202-225-____ or _________ with Congressman _____ at 202-225-____.

Sincerely,

______________________________ ______________________________

U.S. Congressman U.S. Congressman

DRAFT

April __, 2006

The Honorable David Hobson
Chairman
Subcommittee on Energy and Water
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter J. Visclosky
Ranking Member
Subcommittee on Energy and Water
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hobson and Congressman Visclosky:

We are writing to ask for your help this year in funding a program authorized in Section 349 (g) and (h) of the Energy Policy Act of 2005. The program would provide technical and financial assistance to oil and natural gas producing states, through the Interstate Oil and Gas Compact Commission (IOGCC), to assist the States in quantifying and mitigating environmental risks of onshore orphaned oil and gas wells on State and private land. We urge you to include $10 million in the Energy and Water budget for the Department of Energy to fund this program.

Most U.S. producing states contain mature oil and natural gas producing fields – fields with wells that predate state regulation of oil and gas. Most producing states, therefore, have huge numbers of older "orphaned" wells which, until properly plugged, have the potential of leaking oil or salt water and polluting fresh water sources. While states have limited funds to plug orphan wells, supplementing these funds will accelerate the effort to address this century-old problem. The goal of this program is to ensure adequate funding over a 5 - 10 year period to allow states to plug most, if not all, remaining orphaned wells in the United States.

Providing funds to states on a matching basis over 5- 10 years would enable states to address this chronic potential environmental hazard in a more comprehensive and preemptory way than has previously been possible. Wells with the potential of leaking oil and salt water into streams, rivers and groundwater will be safely and permanently plugged.

Congressionally chartered in 1935, the IOGCC is the largest compact of states and represents the regulatory and policy interests of the nation's petroleum producing states. The IOGCC is an effective and strong advocate of the states on oil and gas issues. Under this program, the IOGCC would serve as the conduit through which these funds would be directed to States for this critical work.

Thank you for your consideration of our request.

Sincerely,

RESOLUTION 05.093

Supporting Hydrocarbon Exploration and Development in the Coastal Plain of ANWR as part of the National Energy Policy

WHEREAS, the oil and natural gas industry is a vital part of the United States society and economy; and

WHEREAS, IOGCC supports conservation and use of alternative fuels, but recognizes that for the foreseeable future increased oil production is needed to fuel the nation's transportation system; and

WHEREAS, increasing domestic energy production and reducing dependence on foreign supplies are in the best interest of our nation's strategic and economic well being; and

WHEREAS, the U.S. currently imports over 58% of the nation's needed petroleum. These oil imports cost more than $160 billion a year (this figure does not include the military costs of protecting that imported supply); and

WHEREAS, high energy prices are a major concern for the consuming public; and

WHEREAS, the Coastal Plain of ANWR is America's best possibility for the discovery of another onshore giant "Prudhoe Bay-sized" oil and gas field in North America. U.S. Department of Interior estimates range from 9 to 16 billion barrels of recoverable oil; and

WHEREAS, advanced technology has greatly reduced the "footprint" needed for/of Arctic oil development. If Prudhoe Bay were developed today, the footprint would be 1,526 acres, 64% smaller; and

WHEREAS, only the 1.5 million acre Coastal Plain, 8% of ANWR is being considered for development. The remaining 17.5 million acres or 92% of ANWR will remain permanently closed to any kind of development as federally designated wilderness. If oil is discovered, less than 2000 acres of the over 1.5 million acres of the Coastal Plain will be affected by surface development activities; and

WHEREAS, revenues to the State and Federal Treasury will be enhanced by billions of dollars from bonus bids, lease rentals, royalties and taxes attributed to development within the Coastal Plain of ANWR. Estimates in 2005 for bonus bids alone were $2.4 billion; and

WHEREAS, hundreds of thousands of jobs will be created by development within the Coastal Plain of ANWR; and

WHEREAS, to date, North Slope oil field development expenditures for production activity has contributed over $50 billion to the nation's economy, directly impacting each state in the union; and

WHEREAS, the North Slope oil fields currently provide the U.S. with approximately 20% of its domestic production. Since 1988 this production has been on the decline. Peak production was reached at 2 million barrels a day, but has declined to a current level of less than 1 million barrels a day; and

WHEREAS, the Trans-Alaska Oil Pipeline currently operates each day at less than half of its design capacity; and

WHEREAS, government studies suggest that new production from the Coastal Plain of ANWR could produce a 10-year sustained rate of 1 million barrels per day, supplying over 35% of the nation's domestic output, with production likely to continue for more than 25 years; and

WHEREAS, incremental production from the Coastal Plain of ANWR should help reduce price volatility in the U.S. market and reduce the nation's outflow of funds for the purchase of oil; and

WHEREAS, oil and gas development and wildlife are successfully coexisting in Alaska's Arctic. For example, the Central Arctic Caribou Herded at Prudhoe Bay has grown from 3,000 to as high as 31,857 during the last 25 years of operations; and

WHEREAS, more than 75% of Alaskans, including a majority of the residents of Kakovik, the only Inupiat village on ANWR, favor exploration and production in ANWR. The Inupiat Eskimos who live in and near ANWR support onshore oil development on the Coastal Plain of ANWR.

NOW, THEREFORE, BE IT RESOLVED, that the Interstate Oil and Gas Compact Commission urges the President and Congress, in the nation interest, to open the Coastal Plain of ANWR to hydrocarbon exploration and development.

History: Originally approved October 2003 as resolution 03.107;
Reauthorized September 2005 as resolution 05.093.

JOB STATUS REPORT

TIME : 04/20/2006 15:50
NAME : AOGCC
FAX# : 9072767542
TEL# :
SER.# : BRO2J2502370

DATE,TIME	04/20 15:48
FAX NO./NAME	14055253592
DURATION	00:02:13
PAGE(S)	08
RESULT	OK
MODE	STANDARD ECM

Alaska Oil and Gas Conservation Commission
333 West 7th Avenue, Suite 100
Anchorage, AK 99501-3539
Phone: (907) 279-1433
Fax: (907) 276-7542

Fax Transmission

To: CHRISTINE HANSEN
IOGCC

Fax #: 405 525 3592

From: JOHN K. NORMAN

Date: 04/20/06

Phone #: 907 793-1238

Subject: ORPHANED WELL FUNDING

Pages (including cover sheet): 9

Message:

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JOB STATUS REPORT

TIME : 04/20/2006 15:47
NAME : AOGCC
FAX# : 9072767542
TEL# :
SER.# : BROJ2J2502370

DATE,TIME	04/20 15:45
FAX NO./NAME	12022250425
DURATION	00:01:55
PAGE(S)	08
RESULT	OK
MODE	STANDARD ECM

Alaska Oil and Gas Conservation Commission
333 West 7th Avenue, Suite 100
Anchorage, AK 99501-3539
Phone: (907) 279-1433
Fax: (907) 276-7542

Fax Transmission

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To: MATTHEW HITE
LEGISLATIVE ASST. TO CONGRESSMAN YOUNG

Fax #: 202 225 0425

From: JOHN K. NORMAN

Date: 4/20/06

Phone #: 907 793-1238

Subject: AOGCC ORPHANED WELL FUNDING

Pages (including cover sheet): 9

Message:

If you do not receive all the pages or have any problems with this fax, please call for assistance at **(907) 793-1223**.

JOB STATUS REPORT

TIME : 04/20/2006 15:44
NAME : AOGCC
FAX# : 9072767542
TEL# :
SER.# : BRO2J2502370

DATE,TIME	04/20 15:42
FAX NO./NAME	12026245857
DURATION	00:02:31
PAGE(S)	08
RESULT	OK
CHECK READABILITY OF TRANSMITTED PAGE(S)	06
MODE	STANDARD

Alaska Oil and Gas Conservation Commission
333 West 7th Avenue, Suite 100
Anchorage, AK 99501-3539
Phone: (907) 279-1433
Fax: (907) 276-7542

Fax Transmission

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To: JOHN KATZ

Fax #: 202 624 5857

From: JOHN K. NORMAN

Date: 04/20/06

Phone #: 907 793-1238

Subject: ORPHNED WELL FUNDING

Pages (including cover sheet): 9

Message:

If you do not receive all the pages or have any problems with this fax, please call for assistance at **(907) 793-1223**.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA OIL AND GAS CONSERVATION COMMISSION

333 W. 7TH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-3539
PHONE (907) 279-1433
FAX (907) 276-7542

September 13, 2005

Lawrence E. Bengal
Director
Oil and Gas Commission of Arkansas
PO Box 1472
Eldorado, AR 71731-1472

Dear Larry:

Thanks for sending copies of the Arkansas Legislation creating the fund to address abandoned and orphan wells.

I am particularly intrigued with the idea of dispensing with bonding, and instead, requiring payment of what would otherwise be a bond premium into a well plugging fund. This strikes me as a "win-win," situation. Recent experience in Alaska has shown that our current bonding could be inadequate; yet, it will be difficult to get industry acceptance for increased bonding limits. The idea of having what otherwise would be paid as a bond premium, used to create an orphan-well fund, will allow us to create a fund to be used, when needed, for the plugging and abandonment of wells where the operator has not discharged this responsibility.

At this point, we are well along in working on legislation for the next legislative session, which will begin in January 2006. This is an idea that we probably will work on with a view toward introducing legislation in 2007.

Thanks again for sending this information. I think you have come up with a great idea and we may well decide to imitate it.

Very Truly Yours,

John K. Norman
Chairman

cc: Commissioner Daniel T. Seamount, Jr.
Commissioner Cathy P. Foerster

Bonding

Subject: Re: Operator Bonding/ GRI wells.
From: Rob Mintz <robert_mintz@law.state.ak.us>
Date: Thu, 16 Sep 2004 11:08:42 -0800
To: bob_crandall@admin.state.ak.us, john_norman@admin.state.ak.us
CC: dan_seamount@admin.state.ak.us, winton_aubert@admin.state.ak.us

As Jack Benny once said, "I'm thinking, I'm thinking." But in the meantime, it seems to me that an equally if not more important issue to consider is the liability of a former operator. Our current regulations, esp. 20 AAC 25.020, seem to contemplate that once the Commission approves a transfer of operatorship, the transferor is off the hook. But as Bob notes, the ultimate sale of properties from well-financed entitities to shakier ones may be a major problem as to the ultimate plugging and proper abandonment of wells. A related issue is whether we should let just anyone become an operator who can come up with $100,000 or $200,000 in security, or whether there should be additional qualifications required.

>>> John Norman <John_Norman@admin.state.ak.us> 9/15/2004 5:05:03 PM >>>
Then perhaps what we should do is leave the bond amount at $200,000 for the time being but amend our regulations to specify that if a well in Alaska is left in an unstable condition we will look FIRST to the Operator, NEXT to other working interest owners and THEN to the owner to properly plug and abandon the well. Only as a LAST resort will the AOGCC step in.

The rule making process will put all owners in the State (Native Corporations, DNR, the Feds, homesteaders, Mental Health Land trust, University, etc) on notice that we expect them to obtain adequate security to insure that wells are properly P&A'ed. The owner is the one who selects the lessee and is thus in the best position to obtain adequate bonding if the lessee they have chosen is not financially sound--- plus, the owner will in almost all cases have received front money in the form of a bonus and if the deal goes sour the owner should be expected to help clean up the mess.

Rob,what do you think?

Robert Crandall wrote:

> John;
>
> These are very important questions, I've looked into the question of
> bond amounts before and have found it to be somewhat complex. First of
> all a 200,000 statewide blanket bond typically will not be adequate to
> plug a single exploratory well. We lucked out with GRI for the reasons
> you state below, so no our bond amount is not adequate to cover most
> situations. If you look at bond amounts throughout the USA and Canada
> you'll find that Alaska has one of the higher amounts. Even states
> like Oklahoma and Texas that have tax based orphan well plugging funds
> have very low bond amounts by comparison. This situation arose because
> bonds are considered a barrier to poorly capitalized operators and
> unpractical for large operators. Oklahoma and Texas have decided its
> better for economic? legal? reasons to use tax money to plug wells
> than to try to set bonds that can cover well repair and plugging.
> Think of the bond amount we'd need for BP, of course BP is not a big
> risk but someday BP will sell to a successor operator.

>
> When Cross Timbers bought the Shell interest in Middle Ground Shoals
> DNR did several shrewd things; 1) It did not release Shell from
> ultimate liability to abandon the property and 2) it required XTO to
> contribute to a decommissioning fund. This is an example of the
> mineral estate owner pro actively managing abandonment liability and
> fits well with John's idea for abandonment responsibility. This could
> be a workable form for an Alaskan system because we have relatively
> few very large fields. In a state like Oklahoma with lots of small
> properties it would be to cumbersome. I think if we formalize
> abandonment liability with the mineral estate, we should also require
> the mineral owner manage that responsibility, either with the operator
> self insuring or when thats impractical through a decommissioning fund.
>
> John Norman wrote:
>
>> Bob and Rob- You both did a great job putting the 5 GRI wells to bed
>> using the bonded amount.
>>
>> Now that the P&A work on these wells has been completed can you give
>> me your thoughts on the following:
>>
>> 1. Is our standard blanket bond amount ($200,000) adequate to cover
>> future situations like this? These
>> were shallow wells on the road system. If the P&A had been in a remote
>> area or if the Operator had
>> abandoned more than 5 wells we would have been required to dip into
>> our budget to cover P&A costs.
>>
>> 2. Thinking ahead, if this should happen
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>> mineral owner should be responsible if the operator does not
>> properly P&A. I think the Commission
>> should adopt a policy (if we can do so) that we are the
>> responsible party of LAST resort
>> and will pay only if the operator and the mineral owner are both
>> insolvent.
>>
>> I would like us to discus this when Bob is back from Norway. Also,
>> Bob, don't forget the draft press release. I think it will be
>> reassuring to the public to know the Commission is able to take care
>> of wells like this if the operator fails to do so.
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>> Thanks,
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Subject: Re: Operator Bonding/ GRI wells.
From: Rob Mintz <robert_mintz@law.state.ak.us>
Date: Thu, 16 Sep 2004 11:27:17 -0800
To: bob_crandall@admin.state.ak.us, john_norman@admin.state.ak.us
CC: dan_seamount@admin.state.ak.us, winton_aubert@admin.state.ak.us

Question: regarding the rationale that the owner (i.e., what the statute calls "landowner" - the subsurface owner, generally the lessor) has typically received benefits from leasing, what if the landowner at the time the well needs plugging acquired the property after the well ceased paying royalties, etc.? Are you thinking that the original landowner would be liable?

>>> John Norman <John_Norman@admin.state.ak.us> 9/15/2004 5:05:03 PM >>>
Then perhaps what we should do is leave the bond amount at $200,000 for the time being but amend our regulations to specify that if a well in Alaska is left in an unstable condition we will look FIRST to the Operator, NEXT to other working interest owners and THEN to the owner to properly plug and abandon the well. Only as a LAST resort will the AOGCC step in.

The rule making process will put all owners in the State (Native Corporations, DNR, the Feds, homesteaders, Mental Health Land trust, University, etc) on notice that we expect them to obtain adequate security to insure that wells are properly P&A'ed. The owner is the one who selects the lessee and is thus in the best position to obtain adequate bonding if the lessee they have chosen is not financially sound--- plus, the owner will in almost all cases have received front money in the form of a bonus and if the deal goes sour the owner should be expected to help clean up the mess.

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>> reassuring to the public to know the Commission is able to take care
>> of wells like this if the operator fails to do so.
>>
>> Thanks,
>> John
>>
>

Thanks Rob. If we can do so I would like to think about adopting a regulation saying that the owner of the mineral estate has primary liability.

Jody when Bob gets back from Norway please schedule a time when Dan and I can confer with Bob and Rob to see what we can learn from the GRI experience.

Rob, if you will send me a copy of the RMMLF article I will read it before the four of us get together. We may need a statutory amendment if it is not clear we can impose primary liability on the mineral owner by regulation.

Thanks,

John

Rob Mintz wrote:

> John, good questions. As to the first one, I think it is clear that if it cost nearly $200,000 to abandon these little wells on the road system, that amount would be entirely inadequate to deal with more difficult (and more typical) situations. As to the second one, this is indeed a thorny subject. I will give you a copy of an article on it from the Rocky Mtn. Mineral Law institute a few years ago. Maybe you will have better luck than I did in understanding what the authors are trying to say. I don't think it's written very clearly.
>
> Some preliminary thoughts. First, I don't think the Commission has any obligation to plug wells. In fact, there is no explicit authority, let alone obligation, in the statute for the Commission to plug wells. Second, the current regulations appear to contemplate that the Commission's acceptance of a landowner's designation of an operator subsitutes the operator's obligation to plug for the landowner's obligation to plug. I'm not sure there is any residual obligation on the part of the landowner. However, the statute is more general, and perhaps the Commission has the authority to revise its regulations to impose secondary liability on the landowner.
>
> >>> John Norman <John_Norman@admin.state.ak.us> 9/7/2004 11:04:27 AM >>>
> Bob and Rob- You both did a great job putting the 5 GRI wells to bed
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will pay only if the operator and the mineral owner are both
insolvent.

I would like us to discus this when Bob is back from Norway. Also, Bob, don't forget the draft press release. I think it will be reassuring to the public to know the Commission is able to take care of wells like this if the operator fails to do so.

Thanks,

John

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§ 12.01 Introduction

An old oil well, a rusting tank, and some old oil field junk sit on otherwise empty grazing land in Colorado. The well hasn't produced in six years, and then it made barely two barrels a day. The operator was last heard of four years ago. Some said he went to Arizona to retire. Perhaps he died. The rancher wants the well and the tank removed. He's afraid his cattle could injure themselves on the junk left at the site, but he hasn't gotten anything from the well lately and doesn't see why he should pay to plug it.

Who is responsible for plugging these wells? Where is the money for the work going to come from? An equitable answer is not readily apparent, and state laws do not always provide a clear answer. Ideally, a mineral interest owner leases to a responsible operator. The operator drills a well, produces the well until it no longer is commercial and then surrenders the lease with the well properly plugged and abandoned as required by the lease terms. But reality is not always that simple. Costs rise as production declines, and the end of commercial production brings with it a very large expense just when there no longer is enough current revenue to cover it. Adding to the complexity are transfers of working and royalty interests during the life of an oil lease, as well as the severance of the surface and the mineral estates. At the end of commercial production, if a solvent operator cannot be found, everyone claims that someone else is responsible for plugging, and state regulatory agencies may have to resolve the problem.

§ 12.02 Nature and Extent of the Problem

A study conducted in 1996 by the Interstate Oil and Gas Compact Commission (IOGCC)[1] found about 285,000 idle wells in the United States, up from about 215,000 in 1992, when the IOGCC made its first study. Over the last three years, during periods when oil prices have declined, many more wells became idle. For example, the California Division of Oil, Gas and Geothermal Resources (DOGGR), the state oil and gas regulatory agency, reports an increase of at least 2,000 idle wells in California since 1996.[2]

All idle wells are not the same. The IOGCC defines three different kinds: (1) wells not producing or injecting that have state approval to remain idle, (2) wells not producing or injecting that do not have express state approval to remain idle but have a known and solvent operator, and (3) wells not producing or injecting that have neither express state ap-

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[1] *See* Interstate Oil & Gas Compact Comm'n, Ad Hoc Idle Well Committee, *Produce or Plug: The Dilemma over the Nation's Idle Oil and Gas Wells* (Dec. 1996).

[2] Interview with James T. Campion, Jr., Technical Services Manager, California Division of Oil, Gas and Geothermal Resources, Sacramento, Cal. (May 28, 1999).

Although the number of idle wells in the United States is increasing, idle wells still are not a large percentage of all wells that have been drilled. As of 1996, only 10% of all wells drilled were idle, while 55% had been plugged and 35% still were producing or injecting. Of the 285,000 idle wells in 1996, 53% were idle with state approval, and 25% lacked state approval but had known and solvent operators. Only 22%, or about 63,000, were orphan wells. As expected, the states with the largest and longest history of oil production had the largest number of idle wells. Texas had the most (93,000). The other states with over 10,000 idle wells were Kansas (54,000), California (31,500), Louisiana (21,000), Kentucky (15,700), and West Virginia (14,500). Most of the Rocky Mountain states had between 1,500 and 10,000 idle wells each. The severity of the problem posed by idle wells is greater, of course, in those states in which idle wells are a greater percentage of existing, unplugged wells. Although Texas had the most, the number of idle wells when expressed as a percentage of existing wells was only 26%, slightly above the national average of 22%. California, Kansas, and Louisiana had the greatest number of idle wells and the greatest percentage of idle wells, over 36% of existing wells. Arizona, Tennessee, and Florida were the other states with idle wells comprising over 36% of their existing wells. No more than 15% of the wells in Colorado, New Mexico, Oklahoma, and the Dakotas were idle; between 26% and 35% of the wells in Montana, Wyoming, Utah, and Nebraska were idle.[8]

All wells, even those currently producing, eventually will have to be plugged.[9] Unplugged deserted wells can present a

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[8] *See* Interstate Oil & Gas Compact Comm'n, *supra* note 1, at 5-6.

[9] Throughout this paper, the term "plugging" refers to "[t]he sealing off of the fluids in the strata penetrated by a well, so that the fluid from one stratum will not escape into another or to the surface." *See* Williams & Meyers, *supra* note 5, at 799. "Abandonment" can have the same meaning as "plugging." *Id.* at 4. Frequently these terms are used interchangeably or in tandem, as in the "plugging and abandonment" of a well, to refer not only to the plugging of the well, but to the removal of installations, equipment, personal property, and fixtures; and the termination of all operations. *Id.* at 4-6.

state.[13] Oklahoma requires the well operator to plug the well in accordance with the procedures prescribed by the Corporation Commission.[14] Kansas also imposes responsibility on the operator.[15] Kansas and California, however, do not limit responsibility to the current or last operator of the well. In Kansas, the original operator and any person who tampers with the well without authorization also have responsibility.[16] California law permits the DOGGR to pursue everyone who operated the well after January 1, 1996, until it finds a prior operator with sufficient financial resources to plug the well.[17] North Dakota imposes liability on the operator and on all persons owning working interests at the time the well must be plugged. Owners of royalty and overriding royalty interests are excluded.[18]

The person or entity that must identify itself to the state regulatory agency as possessor of the ownership interest in the well appears to be the responsible party in Colorado,[19] Montana,[20] New Mexico,[21] Utah,[22] and Wyoming.[23] However, Colorado,[24] New Mexico,[25] and Utah[26] require the operator to

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[13] *See* Tex. Nat. Res. Code Ann. § 89.002(a)(2) (West 1993); Cal. Pub. Res. Code Ann. §§ 3009, 3201, 3202 (West Supp. 1999).

[14] *See* Okla. Stat. Ann. tit. 17, § 53 (West 1998); Gannon v. Mobil Oil Co., 573 F.2d 1158, 1162 (10th Cir. 1978).

[15] *See* Kan. Stat. Ann. § 55-179 (Supp. 1998).

[16] *See* Kan. Stat. Ann. § 55-179(b) (Supp. 1998).

[17] *See* Cal. Pub. Res. Code Ann. § 3237(c) (West Supp. 1999).

[18] *See* N.D. Cent. Code Ann. § 38-08-04.8 (1987).

[19] *See* Colo. Rev. Stat. Ann. § 34-60-106 (West 1998).

[20] *See* Mont. Code Ann. § 82-11-123 (1997).

[21] *See* N.M. Stat. Ann. § 70-2-12 (Supp. 1998).

[22] *See* Utah Code Ann. § 40-6-5 (1998).

[23] *See* Wyo. Stat. Ann. § 30-5-104 (1999).

[24] *See* Colo. Rev. Stat. Ann. § 34-60-106(13) (West 1998).

[25] *See* N.M. Stat. Ann. § 70-2-14(A) (Michie 1995).

[26] *See* Utah Code Ann. § 40-6-5(2)(f) (1998).

control of any well."[31] " 'Owner' includes 'operator' when any well is operated or has been operated or is about to be operated by any person other than the owner."[32] " 'Operator' includes 'owner' when any well is or has been or is about to be operated by or under the direction of the owner."[33]

Under this statutory scenario, the DOGGR wanted several leaking, deserted wells near Fresno plugged and the production site cleaned up. It estimated the costs to be high, perhaps a million dollars. The wells had been drilled years ago. The lease had been held by several companies, most of which were long out of business. The last operator was a small company that had filed for bankruptcy. The mineral interest owner was Wells Fargo Bank (Wells Fargo), whose predecessor had executed the oil and gas lease and had received considerable royalties. The DOGGR believed that Wells Fargo was the only one with any interest in the production operations that had the financial resources to plug the wells and clean up the site. The DOGGR claimed that Wells Fargo became the owner of the wells upon the termination of the lease and, therefore, was responsible for plugging them. Finding the statutory definitions of "owner" and "operator" confusing and unhelpful, the California Court of Appeal in *Wells Fargo Bank v. Goldzband*[34] agreed with the DOGGR that Wells Fargo could be held responsible. Wells Fargo was an owner that had received a substantial benefit from the production of the wells.

Before the *Wells Fargo* opinion was issued, concern had spread throughout the industry in California that royalty interest owners that never had any operational role in oil production may be responsible for well plugging. The DOGGR was concerned that the exodus of major oil companies would leave few current operators with adequate financial resources

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[31] Cal. Pub. Res. Code Ann. § 3009 (West 1984 & Supp. 1999).

[32] Cal. Pub. Res. Code Ann. § 3010 (West 1984) (repealed 1996).

[33] Cal. Pub. Res. Code Ann. § 3011 (West 1984) (repealed 1996).

[34] 61 Cal. Rptr. 2d 826 (Cal. Ct. App. 1997).

homa law. The court in *United States v. 79.95 Acres of Land*[38] did not agree. It held that because the wells were not abandoned but still producing when the government condemned the property, the burden of plugging fell on the government, not the leaseholders.[39]

When a lessee assigns its leasehold with some producing wells and some deserted wells, the new lessee may claim that it never assumed responsibility for the deserted wells because it never operated them. The state, however, may view the assignment of the leasehold as a transfer of all the wells on the lease and attempt to compel the new lessee to plug the deserted wells. When the Texas Railroad Commission attempted to do this, the court had no problem concluding that the new lessee had never operated or controlled the deserted wells and, therefore, was not responsible for plugging them.[40] In another situation, however, the Railroad Commission was able to assert successfully its claim for the costs for well plugging against a bankruptcy trustee who claimed that he never operated the wells and, therefore, was not responsible for plugging them.[41]

Texas holds operators primarily and nonoperators secondarily responsible for plugging wells. A nonoperator is a person owning a working interest who is not an operator. When the Railroad Commission attempts to impose well plugging liability on a nonoperator, it may involve itself in disputes regarding the nature of oil and gas interests.[42] The courts, not

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[38] 459 F.2d 185, 188-89 (10th Cir. 1972).

[39] *See id.* at 189.

[40] *See* Railroad Comm'n v. American Petrofina Co., 576 S.W.2d 658, 659 (Tex. Civ. App.—Beaumont 1978).

[41] *See In re* H.L.S. Energy Co., 151 F.3d 434, 439 (5th Cir. 1998) (noting that trustee had sole operating interest in wells and was the operator responsible for plugging them whether or not he produced them).

[42] *See* Railroad Comm'n v. Olin Corp., 690 S.W.2d 628, 631 (Tex. App.—Austin 1985) (holding that because owners of a carried interest had a reversionary interest in part of the working interest when the Railroad Commission ordered the well plugged, they were responsible as nonoperators).

orders of the commission."[46] Texas statutes also specify the permissible types of alternate security (individual well bond, blanket bond, nonrefundable annual fee of $100 for operators with acceptable record of compliance, otherwise 3% of the required bond, or first lien on tangible personal property), individual bond amounts ($2 per foot of well depth) and blanket bond amounts ($25,000 for 10 or fewer wells, $50,000 for 11 through 99 wells, and $250,000 for 100 or more wells).[47] Oklahoma requires well operators to provide evidence of their financial ability to plug wells and clean up production sites by showing a net worth of at least $50,000 or providing an irrevocable letter of credit, cash, cashier's check, certificate of deposit, or other negotiable instrument, or blanket surety bond of $25,000.[48] The amount may be raised at the discretion of the state or lowered if the operator certifies that its plugging liability is less than $25,000. The Corporation Commission may shut-in, without notice or hearing, all of an operator's wells until it provides evidence of its financial ability to plug them.[49]

California, unlike many major producing states, does not require "life of the well" bonds. An operator must file a bond or other security before beginning drilling, redrilling, plugging, or any other operation permanently altering the well casing. When the operation is completed satisfactorily, the security may be released at the operator's request.[50] A bond filed when a well is drilled may be released after the well has begun to produce. It will not be available years later when the well needs to be plugged. Requiring a new bond before plugging operations are begun does not address the problem of securing the financial resources to plug a deserted well if the operator has left the state, gone out of business, or is insolvent. This lack of available security has been a primary factor motivating the DOGGR to

[46] Tex. Nat. Res. Code Ann. § 91.105 (West 1993).

[47] *See* Tex. Nat. Res. Code Ann. §§ 91.104, 91.1041, 91.1042 (West 1993).

[48] *See* Okla. Stat. Ann. tit. 52, § 318.1 (West Supp. 1999).

[49] *See id.*

[50] *See* Cal. Pub. Res. Code Ann. §§ 3204, 3205, 3207, 3208 (West 1984 & Supp. 1999).

for plugging "cannot be found or is financially unable to pay the cost" of the work.[53] The Texas Railroad Commission may plug an improperly plugged well or a properly plugged well in need of replugging if no solvent operator or nonoperator can be found. It may plug a well that is leaking and will cause or is likely to cause pollution or injury to public health. It also may plug a "delinquent inactive well" after notice to the operator and the operator's failure to plug the well.[54] California statutes authorize the DOGGR to plug "deserted" wells that the operator has failed to plug after being ordered to do so and to plug "hazardous" and "idle-deserted" wells for which there is no responsible operator.[55]

[5] Sources for Funding Well Plugging by the State

When a regulatory agency plugs an abandoned well, it must have a source of funds. The bond or other security would be the most convenient source, but if it is nonexistent or inadequate, the state needs something else. If the operator is still around and solvent, the state can sue the operator to recover its costs. Some statutes, like those of Kansas, North Dakota, and Texas, expressly provide the regulatory agency with a cause of action for this purpose.[56] If the operator is not around or is insolvent but has left salvageable oil production equipment, this equipment provides a source from which the state may recover its plugging costs. Some statutes, like those of California, Kansas, Oklahoma, and Texas, give the state a lien on this equipment.[57] North Dakota gives its commission outright authority to confiscate the production equipment.[58]

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[53] Okla. Stat. Ann. tit. 52, § 310 (West 1991).

[54] *See* Tex. Nat. Res. Code Ann. § 89.043(c) (West Supp. 1999).

[55] *See* Cal. Pub. Res. Code Ann. §§ 3226, 3237, 3250-58 (West 1984 & Supp. 1999).

[56] *See* Kan. Stat. Ann. § 55-180 (Supp. 1998); N.D. Cent. Code § 38-08-04.8 (1987); Tex. Nat. Res. Code Ann. § 89.083 (West Supp. 1999).

[57] *See* Cal. Pub. Res. Code Ann. § 3226 (West 1984); Kan. Stat. Ann. § 55-180 (Supp. 1998); Okla. Stat. Ann. tit. 17 § 53.3 (West 1998); Tex. Nat. Res. Code Ann. § 89.083 (West Supp. 1999).

[58] *See* N.D. Cent. Code Ann. § 38-08-04.9 (1987).

§ 12.04 Plugging Idle and Deserted Wells from the Perspective of the State Regulatory Agency

[1] Exercising the Police Power—When Does A State Regulatory Agency Go Too Far?

State oil and gas regulatory agencies exercise the police power to prevent waste of oil and gas and to protect public health and safety. The authority of these agencies to act pursuant to their police power to prevent waste of oil and gas without incurring liability to oil operators for limiting their production has long been recognized.[64] If someone conducts a business, engages in activity, or maintains his or her property in a condition that harms or threatens to harm public health and safety, the state may abate the offending business, activity, or condition if it constitutes a public nuisance. If the state legislature has declared something to be a public nuisance, no inquiry beyond its existence need be made, and the regulatory agency may take appropriate action to abate it.[65] For example, the California Legislature declared that wells posing a danger to life, health, or natural resources or that are deserted, and for which there is no responsible operator, are public nuisances and may be abated by the DOGGR.[66] The use of the police power in these instances would not subject the state to liability for a regulatory taking.[67] The same might not be true for deserted wells for which there is a responsible operator who has not pursued what the state believes is a sufficiently aggressive program of idle well plugging. In this situation, there is neither a statute declaring the well a public nuisance nor an imminent danger of public harm that would validate the regulatory action.

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[64] *See* Ohio Oil Co. v. Indiana, 177 U.S. 190 (1900).

[65] *Compare* Eccles v. Ditto, 167 P. 726 (N.M. 1917) (noting that a statute making waste of artesian water a public nuisance validated supervisor's repair of leaking well as proper exercise of police power) *with* Beck Dev. Co. v. Southern Pac. Transp. Co., 52 Cal. Rptr. 2d 518, 550-51 (Cal. Ct. App. 1996) (noting that absence of statute making oil contamination of soil a nuisance requires a showing that there was a threat to public health and safety, which showing could not be made).

[66] *See* Cal. Pub. Res. Code Ann. §§ 3250, 3251 (West 1984 & Supp. 1999).

[67] *See* Wells Fargo Bank v. Goldzband, 61 Cal. Rptr. 2d 826, 835-36 (Cal. Ct. App. 1997).

condemnation, provided they give the owner reasonable notice and an opportunity to be heard.[70] The exercise of the police power to abate a nuisance is not a governmental taking.[71] Even though regulatory action may eliminate the only economically productive use (oil production), it does not proscribe a productive use that previously was permissible where the well has remained idle for years without state approval.[72] The outright destruction of private property by the government, which would occur if a well were plugged, would not be found to be a regulatory taking if it is done to protect public health and safety.[73]

The state agency, however, must show that a non-hazardous well has no future economic use when it orders it plugged. An operator may claim that the well could be productive if oil prices rose. But how far and how quickly? Is litigating whether prices will increase, and if they do, how much and how soon, or whether a particular well could become economic if the prices do increase as the operator claims, worth the effort from the agency's perspective? Maybe not. However, if wells remain unplugged, it is less likely that a responsible party with the financial resources to plug them will be around when their lack of future economic worth becomes patent.

[2] Looking for the "Deep Pocket"

Deserted wells for which there is no solvent party responsible for their plugging are called orphans. The state regulatory agency's mission is to determine whether these wells really

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[70] *See, e.g.*, Scott v. City of Del Mar, 68 Cal. Rptr. 2d 317, 322 (Cal. Ct. App. 1997) (finding no taking where city removed seawalls and riprap encroaching on public beach after owners failed properly to challenge the administrative action).

[71] *See, e.g.*, Goldblatt v. Hempstead, 369 U.S. 590 (1962) (preventing continued operation of quarry in residential area); Miller v. Schoene, 276 U.S. 272 (1928) (ordering destruction of diseased cedar trees to prevent infection of nearby orchard).

[72] *See* Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1029-30 (1992); Tahoe Keys Property Owners' Ass'n v. State Water Resources Control Bd., 28 Cal. Rptr. 2d 734, 743, n.14 (Cal. Ct. App. 1994).

[73] *See* Hoeck v. City of Portland, 57 F.3d 781, 788-89 (9th Cir. 1995); Beck Dev. Co. v. Southern Pac. Transp. Co., 52 Cal. Rptr. 2d 518, 537 (Cal. Ct. App. 1996).

Ohio's plugging statute includes both the person with the right to drill when the well becomes nonproductive and the current owner of the well. The court made the following statement that was music to the ears of the state regulatory agency:

> The issue as to whether Herold or Brown should bear the expense of plugging the wells is not before us, this being a private matter between them. However, both have a statutory duty to the public to plug the wells. For protection of the public interest, it makes no difference who (Brown or Herold) plugs the wells; the important issue is that one does so promptly.[76]

Taking its cue from the Ohio court, the Kentucky Supreme Court in *Pro Gas, Inc. v. Har-Ken Oil Co.*,[77] held that the assignee of an oil and gas lease from a trustee in bankruptcy became the new operator of the wells. As the new operator, it was required to post a bond and plug the wells even though it never produced them. Paraphrasing *Houser,* the Kentucky court said:

> Any issue as to whether appellee [assignor] or appellant [assignee] should bear the expense of plugging, if necessary, is not now before us, this being a private matter between them. It makes little difference who plugs the wells, the important factor being the protection of the public interest which dictates that appellant [assignee] post the bonds statutorily required.[78]

Frequently, major oil companies and large independents find that retaining leases with numerous marginal wells is not economical given their relatively high overhead. They assign the leases to small operators with less overhead who try to get the last vestiges of commercial production from some of the wells and may never produce the others. Consequently, when these wells reach the end of their economic lives, their operators may not have the financial resources to plug them. The state may try to impose plugging liability on the prior operator, especially for those wells that never were produced by the last operator. That attempt was successful in

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[76] *Id.* at 1024.

[77] 883 S.W.2d 485 (Ky. 1994).

[78] *Id.* at 488.

corporate charter had been forfeited for failure to pay taxes.[82] Again, a state was able to find the deep pocket and successfully impose the costs of well plugging on that deep pocket.

[3] Replugging Previously Plugged Wells

Wells that previously have been plugged may leak and require replugging. This is more likely where the wells were plugged long ago. Leaks, however, have developed in wells plugged to current standards, and there may be some wells that never can be securely plugged at a reasonable cost even with today's technology.[83] When a well leaks, or even when a well does not leak but the regulatory agency is concerned about the integrity of the plugging, it may order the operator who originally plugged the well to replug it.[84] The agency may be restricted, however, by a statute freeing the operator of plugging responsibility after the passage of a certain number of years.[85] Another major restriction is the absence of the operator that originally plugged the well. Because the wells most likely in need of replugging are old wells, including wells that were plugged before there was any state well regulation, replugging may be difficult and expensive. These wells may have been plugged simply by shoving some timber or junk down the hole, putting in a few sacks of cement, or placing some debris and dirt over the top of the well. The well bore may have broken down and the debris that is in the well will have to be removed before proper plugging can begin.[86]

Many states have enacted statutes to provide funding to their regulatory agencies for plugging or replugging old wells for

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[82] *See* State v. Leutwyler, 979 S.W.2d 81 (Tex. App.—Austin 1998).

[83] Interview with Richard K. Baker, Deputy State Oil and Gas Supervisor, California Division of Oil, Gas and Geothermal Resources, Cypress, Cal. (June 11, 1999) [hereinafter Baker Interview].

[84] *See, e.g.,* Currey v. Corporation Comm'n, 617 P.2d 177, 179 (Okla. 1979).

[85] *See, e.g.*, Cal. Pub. Res. Code Ann. § 3251.5 (West Supp. 1999).

[86] *See* Baker Interview, *supra* note 83. *See also* Interstate Oil & Gas Compact Comm'n, *supra* note 1, at 61-62.

This California law, enacted to deal with the urbanization of old oil fields, is a good illustration of the need to expand the responsibility for abandoned or deserted and even previously plugged wells beyond the last operator and the state well plugging fund. The regulatory agency should pursue those who operated the wells and, when they are no longer available, the oil industry itself. But when the land becomes so much more valuable for other uses, those who propose and create those new uses should also be responsible. The price a developer pays for land in an old oil field likely is discounted to reflect the presence of old wells. The developer obtains an undeserved windfall when it pays a lower price for the property and then the state steps in to plug or replug the wells before the developer begins its project.

§ 12.05 Plugging Idle and Deserted Wells from the Perspective of the Landowner

[1] Adequacy of the Lease Covenants and Other Terms

Landowners have two primary concerns in this area: making sure that they do not become liable for plugging and abandonment costs, and making sure that idle wells are plugged and abandoned at the "right" time. Most of the time, oil and gas wells are drilled under the terms of oil and gas leases from the owners of the mineral estate. Usually it is a lessee who makes the initial decisions about where and when to drill, how to operate, and when to plug and abandon the well.[90] Common sense and business realities dictate this arrangement since the oil and gas lessee generally has superior knowledge and experience in exploring for and developing oil and gas reserves, and in many cases, has specific knowledge not available to the mineral owner about

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[90]Typically, the lessee has

> the sole and exclusive right to explore for, drill for, produce, extract and take oil, gas and other hydrocarbons . . . and the right to construct, erect, maintain, operate, use, repair, replace and remove pipe lines, telephone, telegraph and power lines, tanks, machinery, appliances, buildings and other structures useful, necessary or proper for carrying on its operations on the leased land . . . .

7 Williams & Meyers, *Oil & Gas Law* § 699.1, at 699-2 (1998).

[a] Respective Rights of the Lessor and the Lessee to the Use of the Surface

As between the surface and the minerals, the mineral estate, and therefore the lessee of the mineral interest owner, is the dominant estate.[94] The lessee is entitled to use so much of the surface as is reasonably necessary for the enjoyment of its leasehold rights.[95] Express lease provisions and the case law developed over many years have supported the premise that the lessee will have control over where and when to drill wells, where to locate surface facilities, and when to remove them.

Several typical lease terms and legal doctrines act as checks on these otherwise superior rights of the lessee. In addition to the express rights of the lessor set forth in the lease, the accommodation doctrine provides that the lessee must consider the rights of the lessor and accommodate the lessor's surface uses if they do not unreasonably interfere with the lessee's operations.[96] Typically, oil and gas production operations co-exist with many other surface uses, from ordinary farms and ranches, to the delicate habitat of sensitive plant and animal species, to highly urbanized areas.

Although not embodied in any express right of the lessor in the lease, sensible lessees try to accommodate the lessor's reasonable surface uses in most cases, since good working relations with the landowner will make the lessee's long-term operations easier. These range from simple things, such as paying for repairs to fences and upgrading roads, to more complicated matters, such as coordinating the timing of drilling operations to accommodate seasonal events involving crops or livestock.

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[94] *See* 1 Williams & Meyers, *Oil & Gas Law* § 218, at 198.6 (1998). Despite erosion of the principle in recent years, this is still the general rule. *See* John F. Welborn, "New Rights of Surface Owners: Changes in the Dominant/Servient Relationship between the Mineral and Surface Estates," 40 *Rocky Mt. Min. L. Inst.* 22-1 (1994).

[95] California courts, for example, have adopted the general rule that oil and gas lessees are "entitled to use any and all parts of the entire [lease] tract reasonably necessary to give them the full benefit of the rights and estate conveyed." Wall v. Shell Oil Co., 209 Cal. App. 2d 504, 511 (1962).

[96] *See* Getty Oil Co. v. Jones, 470 S.W.2d 618 (Tex. 1971).

whether it can be reworked or recompleted in a different zone, or whether a new technology can be applied to extend or enhance the productive life of the well. In addition, even if the well is no longer economic to produce at the price and cost variables at any given point in time, either the price for which the commodity may be sold could rise or operating costs could fall, and a marginally uneconomic well could become economic. Finally, the lessee might find it useful to convert the inactive production well to a salt water disposal well or an injection well used in a pressure maintenance project, or otherwise utilize the wellbore for appropriate purposes.

Accordingly, leases seldom require that the lessee plug and abandon a well at any particular time prior to lease termination. As long as the locations of surface improvements are not objectionable to the lessor, no danger to health or safety is present, and the lessor still receives royalty or other revenue from the operations, then the fact that some of the wells on the lease are idle or temporarily abandoned is not likely to cause the lessor to demand that something be done. (Indeed, a typical lessor demand concerning a lease or portion of the lease which contains idle wells is for *more* or *further* development of the oil and gas reserves, not the plugging and abandoning of existing wells.) An exception to this usual situation, however, is when the lessor believes that the lands can be put to a more productive or valuable use than oil and gas production, or when the surface estate is severed from the mineral estate, and thus, the surface owner bears all of the inconvenience, but receives none or relatively little of the benefits from the lessee's operations.

Some leases have a "Pugh clause" that will operate to reduce the area covered by the lease if no production is obtained from a particular portion of the leased lands within a certain time, typically by the end of the primary term.[101] A Pugh clause would require, as to the terminated parcels, that the lessee plug and abandon all idle or inactive wells, most likely at the time of termination of the lease as to the affected tracts.

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[101] *See* 4 Williams & Meyers, *Oil & Gas Law* § 670.4, at 101 (1998).

In addition to the express provisions of the oil and gas lease, courts have found in oil and gas leases various implied covenants.[105] The objective of the implied covenants is to assure the lessor that it receives the benefit of its bargain—that the lessee conduct its operations as a reasonable and prudent operator and that the leased lands be developed and operated for the benefit of both lessor and lessee.[106] The "prudent operator" rule requires that the lessee act as would a "reasonable and prudent operator" in the same circumstances. Under this standard, a lessee is obliged to plug and abandon wells and clean-up inactive areas of the lease only if a reasonable and prudent operator would do so. A lessor seeking to compel a lessee to plug and abandon idle wells prior to lease termination might assert a breach of the "prudent operator" covenant, in addition to other claims.

[2] Enforcement of the Lease and Other Remedies of Landowner

A lessor who believes that idle wells on its lease should be plugged and abandoned sooner rather than later could bring an action under the express or implied covenants of the lease briefly described above. The suit would allege breaches of specific provisions, as well as the failure to meet the prudent operator standard. In addition, lessors often make alternative claims under common law theories such as trespass, nuisance, waste, negligence, negligence per se, strict liability, fraud, and malice.[107]

Railroad Comm'n v. American Petrofina Co., 576 S.W.2d 658 (Tex. App. 1978).

[105] *See generally* 5 Williams & Meyers, *Oil & Gas Law* §§ 801-885 (1998).

[106] Various authorities have classified implied covenants differently. One of the six implied covenants described by Williams & Meyers is the "covenant to conduct with reasonable care and due diligence all operations on the leasehold that affect the lessor's royalty interest." *Id.* § 804, at 28.2.

[107] *See, e.g.,* 1 Williams & Meyers, *Oil & Gas Law* § 218.10 (1998); James N. Castleberry, Jr., "Tort Liability in Oil and Gas Operations," 4 *Rocky Mt. Min. L. Inst.* 281 (1958); Susan G. Zachos, "Liabilities Arising from Ownership or Operation of Dead and Dying Oil Fields," 42 *Rocky Mt. Min. L. Inst.* 17-1 (1996); Robert N. Barnes, Patranell Britten Lewis & Roy B. Short, "Tort Liability for Past Mineral Development Activities," 44 *Rocky Mt. Min. L. Inst.* 17-1 (1998).

In most cases, the interest of both the lessor and the lessee are freely assignable. Typically, the lease provides that in the case of transfers by the lessee, upon transfer the transferee becomes liable for performance of the lease and the transferor is relieved of liability for all events occurring after the transfer.[110] Thus, in the case where a lessee has sold its leasehold working interest, the lessor must look to the transferee. An exception would be if the events giving rise to the claim occurred during the time that the transferror owned the lease, such that a duty then owed was breached. The fact that many older leases do not place any restriction upon transfers of the working interest means that less credit-worthy parties may eventually own the lease.

In any case, under the traditional rules, in order to maintain a contract action against a working interest owner or operator, the landowner will have to show either privity of contract or privity of estate.[111]

[3] Successive Users of the Surface Estate

[a] When is the Right Time?

In many cases involving older leases, the lessor will not have a clear contract right to compel the lessee to plug and abandon idle wells prior to lease termination. Causes of action sounding in tort may be successful in extreme cases. A regulatory agency action is often limited to those wells which present a public health and safety issue. Thus, a lessor may

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[110] *See* 2 Williams & Meyers, *Oil & Gas Law* § 403.1, at 265-66 (1998). A typical lease provision states:

> If this lease shall be assigned as to a particular part or parts of the leased land, such division of the leasehold estate shall constitute and create separate and distinct holdings under the lease of and according to the several portions of the leased land as thus divided, and the holder or owner of each such portion of the leased land shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased land . . . ."

7 Williams & Meyers, *Oil & Gas Law* § 699.1, at 699-11 (1998).

[111] "[I]n most states the assignee is not liable for a breach of covenant occurring after his interest in the premises has been extinguished by further assignment of the interest, but possibly this may not be true in all jurisdictions." 2 Williams & Meyers, *Oil & Gas Law* § 403.3, at 269-70 (1998) (footnotes omitted). *See* Sowell v. Northwest Cent. Pipeline Corp., 703 F. Supp. 575 (N.D. Tex. 1988).

some sense, does not meet current technical standards, is the lessee liable for the additional cost to bring it up to current standards? Is the lessee liable for any contamination that might result from an old plugging job? Arguably not, although this would seem to leave the landowner liable for any further work that might be needed.[115]

After lease termination, and once all wells have been plugged and abandoned, and the surface equipment removed, the lessee's duties may be largely over for leases located in rural or semi-rural areas because the land may be suitable for use in that condition. If the land is in an urbanized area, however, the lessor may have plans to redevelop the property and may intend to occupy the same lands where lease facilities were formerly located. Even if a well has been properly plugged and abandoned in accordance with applicable law and even if the regulatory agency has approved the lessee's work, the lessor may still come up somewhat short in that the lessor may not have all that is needed before it can proceed with the redevelopment of the property. Depending on the proposed use of the tract, the governmental agencies responsible for approving the development may require different or additional measures to be taken with respect to the plugged and abandoned well.

[4] Control of the Situation

The lessor is usually not in a position to control the pace of development of the lease, nor is it able easily to control the pace at which wells are plugged and abandoned, or surface facilities removed and the premises cleaned up for the next use of the lands. This is particularly true while the lease is in effect. Lessors usually have the benefit of covenants from their lessees to comply with all laws and to indemnify them against claims arising from the lessees' operations. Accordingly, lessors historically believed that since they had no right to control the details of the lessee's operations and could rely on the lessee to control and be responsible for its operations,

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[115] *See, e.g.*, Cal. Pub. Res. Code Ann. § 3251.5 (West Supp. 1999).

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2416

By: Representative Mahony

For An Act To Be Entitled

AN ACT TO CREATE THE ABANDONED AND ORPHANED WELL PLUGGING FUND FOR THE PURPOSE OF PROVIDING MORE FLEXIBLE AUTHORITY TO THE OIL AND GAS COMMISSION TO GUARANTEE PROPER OPERATION OF OIL WELLS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CREATE THE ABANDONED AND ORPHANED WELL PLUGGING FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1 Arkansas Code Title 15, Chapter 71, Subchapter 1 is amended to add additional sections to read as follows:

<u>15-71-115. Abandoned and Orphaned Well Plugging Fund.</u>

<u>(a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a special revenue fund to be known as the "Abandoned and Orphaned Well Plugging Fund".</u>

<u>(b) The fund shall be used by the Oil and Gas Commission to:</u>

<u>(1) Make expenditures through contracts to plug abandoned and orphaned wells and to remediate associated production facilities;</u>

<u>(2) Award grants to landowners to plug abandoned and orphaned wells and to remediate associated production facilities; and</u>

<u>(3) Make expenditures for emergency repairs to wells or production facilities endangering the public health and safety.</u>

<u>(c) The Abandoned and Orphaned Well Plugging Fund shall receive funds from:</u>

(1) Fees assessed by the commission;

(2) Forfeited bonds; ← now not available

(3) Proceeds from the sale of hydrocarbons and production equipment located at the site of abandoned and orphaned wells;

(4) Grants and gifts from private and public sources; and

(5) Any other revenue as may be authorized by law.

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
8th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2417

By: Representative Mahony

For An Act To Be Entitled

AN ACT TO PROVIDE THE OIL AND GAS COMMISSION WITH MORE FLEXIBLE AUTHORITY TO GUARANTEE PROPER OPERATIONS OF OIL WELLS; TO FUND THE ABANDONED AND ORPHANED WELL PLUGGING FUND; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO PROVIDE THE OIL AND GAS COMMISSION WITH MORE FLEXIBLE AUTHORITY TO GUARANTEE PROPER OPERATIONS OF OIL AND GAS WELLS AND BRINE PRODUCTION UNITS; TO CREATE THE ABANDONED AND ORPHANED WELL PLUGGING FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 15, Chapter 71, Subchapter 1 is amended to read as follows:

15-71-115. Annual fee assessment.

(a)(1) The Oil and Gas Commission shall establish by rule a fee structure to be paid annually by well operators of only those wells producing liquid hydrocarbons.

(2) The date for payment of the first annual fee assessment shall be determined by rule.

(3) All annual fees collected shall be deposited into the Abandoned and Orphaned Well Plugging Fund.

(b)(1) All bonds or other financial assurances in effect on the

New bond system

effective date of this section shall remain in effect until released by the commission from obligation through payment of the initial Abandoned and Orphaned Well Plugging Fund fee assessment under this section.

(2)(A) Additionally, a person shall file and maintain with the commission the amount of financial security required under this section for two (2) consecutive calendar years of payments to the Abandoned and Orphaned Well Plugging Fund payments until the required payments have been made if the person is a well operator who:

(i) Did not operate a well before the effective date of this section; or

(ii) Has not after the effective date of this section made annual payments to the Abandoned and Orphaned Well Plugging Fund for at least two (2) consecutive calendar years preceding an application to drill or transfer wells.

(B)(i) When the operator has made the required payments, the financial security shall be released.

(ii) However, the financial security shall not be released under subdivision (b)(2)(B)(i) of this section, if the commission has filed a claim against the financial security instrument.

(c)(1) Fees shall be assessed for each calendar year, commencing on a date to be established by the commission for all wells of record on January 1 of each year and each subsequent year.

(2) The fees assessed by the commission under this section are in addition to any other fees required by law.

(3) All fees assessed under this section shall be submitted to the commission no later than sixty (60) days after the date listed on the annual fee assessment letter sent to the well operator.

(d) All the fees assessed and collected by the commission each year under this section shall be deposited into the Abandoned and Orphaned Well Plugging Fund.

(e) If a well operator is delinquent for more than sixty (60) days in the payment of fees assessed under this section or if amounts have been expended from the Abandoned and Orphaned Well Plugging Fund to plug, repair, or restore an operator's well or well site, no further permits may be issued to that operator, and the commission may issue an order to cease production of that operator's current wells until all delinquent fees and expended

<u>Abandoned and Orphaned Well Plugging Fund moneys have been repaid to the fund.</u>

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2418

By: Representative Mahony

For An Act To Be Entitled

AN ACT TO PROVIDE THE OIL AND GAS COMMISSION WITH MORE FLEXIBLE AUTHORITY TO GUARANTEE PROPER OPERATIONS OF OIL AND GAS WELLS AND BRINE PRODUCTION UNITS; TO CREATE THE ABANDONED AND ORPHAN WELL PLUGGING FUND; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO PROVIDE THE OIL AND GAS COMMISSION WITH MORE FLEXIBLE AUTHORITY TO GUARANTEE PROPER OPERATIONS OF OIL AND GAS WELLS AND BRINE PRODUCTION UNITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 15-71-110(d) and (e), concerning the powers and duties of the Oil and Gas Commission, are amended to read as follows:

(d) After hearing and notice as provided in this ~~act~~ chapter, the commission ~~shall have the authority to~~ may make such reasonable rules, regulations, and orders as are necessary from time to time in the proper administration and enforcement of this ~~act~~ chapter, including rules, regulations, or orders for the following purposes:

(1)(A) To require the drilling, casing, and plugging of wells to be done in such a manner as to:

(i) Prevent the escape of oil or gas from one (1) stratum to another;

(ii) Prevent the intrusion of water into an oil or gas stratum from a separate stratum; and

(iii) Prevent the pollution of fresh water supplies by oil, gas, or salt water; and

(B) To require a reasonable ~~bond~~ financial assurance acceptable to the commission conditioned on the performance of the duty to plug each dry or abandoned well;

(2) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records;

(3) To prevent the drowning by water of any stratum or part of any stratum capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool;

(4) To require the operation of wells with efficient gas to oil ratios and to fix those ratios;

(5) To prevent "blow outs", "caving", and "seepage" in the sense that conditions indicated by those terms are generally understood in the oil and gas business;

(6) To prevent fires;

(7) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(8) To regulate the "shooting", perforating, and chemical treatment of wells;

(9) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations;

(10) To limit and prorate the production of oil or gas or both from any pool or field for the prevention of waste as defined in this ~~act~~ chapter;

(11) To require, either generally or in or from particulate areas, certificates of clearance or tenders in connection with the transportation of oil or gas;

(12) To regulate the spacing of wells and to establish drilling units;

(13) To prevent, so far as is practical, reasonably avoidable

drainage from each developed unit which is not equalized by counter drainage, regarding oil and gas;

(14) With respect to the drilling of wells for production and disposal of salt water, the commission shall have the jurisdiction and authority of and over all persons and property to the extent necessary to effectively make and enforce rules, regulations, and orders for the following purposes:

(A) To require that the operator shall, before drilling any well in search of salt water or for the injection of salt water into the earth, obtain from the commission a permit authorizing that drilling;

(B) To require that casing and cementing of supply wells and injection wells be done in accordance with such rules and regulations as may be promulgated by the commission;

(C) To require the plugging of wells to be done in such a manner as to:

(i) Prevent the escape of salt water out of one (1) stratum into another;

(ii) Prevent the intrusion of salt water into an oil and gas stratum; and

(iii) Prevent the pollution of fresh water supplies by salt water;

(D) To require the making of reports showing the completion data, volume of water injected, and the filing of electrical logs of all wells with the commission;

(E) To regulate the "shooting" and perforating of all wells;

(F) To require the operation of wells in a manner designed to prevent "blow outs", "caving", and "seepage";

(G) To physically identify at the site the ownership of all salt water wells, plants, ponds, structures, and all storage facilities; and

(H)(i) To require the annual payment of ~~twenty-five dollars ($25.00)~~ one hundred dollars ($100) per well for each ~~salt water~~ injection well and disposal well and each well into which debrominated brine is injected.

(ii) All moneys so collected shall be used solely to pay the expenses and other costs in the administration of this law;

(15) To administer and enforce the applicable provisions of the Natural Gas Policy Act of 1978, ~~Public Law~~ Pub. L. 95-621;

(16) To acquire primary enforcement responsibility either singularly or jointly with the Arkansas Department of Environmental Quality for the control of underground injection under the applicable provisions of the Safe Drinking Water Act, ~~Public Law~~ Pub. L. 93-523, ~~as amended~~ as it existed on January 1, 2005;

(17)(A)(i)(a) To require the payment of a fee of two hundred fifty dollars ($250) or a sum the commission may prescribe for each application for hearing or other proceeding before it under this act.

(b) ~~Provided, in no event shall the fee~~ The fee shall not exceed five hundred dollars ($500); and

(ii) To prescribe a reasonable and necessary charge or fee per copy and per subscription for notices and reports prepared and published by the commission deemed necessary to reimburse the commission for the cost of those notices and reports.

(B) All moneys so collected shall be used solely to pay the expenses and other costs in the administration of this law; and

(18) To administer and enforce any applicable provisions of the Natural Gas Pipeline Safety Act of 1968, ~~Public Law~~ Pub. L. 90-481, and to specifically empower the commission to submit any satisfactory certification required by the Natural Gas Pipeline Safety Act of 1968, ~~Public Law~~ Pub. L. 90-481, in connection with any production process or production facility as defined in this section.

(e) The commission has the following specific powers and duties in administering the Abandoned and Orphan Well Plugging Program and the Abandoned and Orphan Well Plugging Fund:

(1) To adopt rules necessary to implement the Abandoned and Orphaned Well Plugging Program including rules regarding wells deemed abandoned in accordance with § 15-71-217;

(2) To collect the fees assessed by the commission under this chapter and to make deposits into the Abandoned and Orphan Well Plugging Fund;

(3) To deposit the amount of any forfeited bond or other financial assurance into the Abandoned and Orphan Well Plugging Fund;

(4) To recover well-site plugging, repair, and restoration costs from well operators who fail to reimburse the Abandoned and Orphan Well Plugging Fund for expenses attributable to those well operators and to deposit any amounts reimbursed or collected into the Abandoned and Orphan Well Plugging Fund;

(5) To accept, receive, and deposit into the Abandoned and Orphan Well Plugging Fund any grants, gifts, or other funds that may be made available from public or private sources;

(6) To make expenditures of amounts appropriated from the Abandoned and Orphan Well Plugging Fund, as the commission may deem appropriate in its sole discretion, for the sole purposes of plugging, replugging, repairing any well, or restoring the site of any well, including but not limited to:

(A) Removal of well-site equipment or production facilities; and

(B) Reimbursement to landowners through grants for plugging a well and restoring the site of a well, including, but not limited to, removal of well-site equipment located on the landowner's property for which the landowner has no legal obligation to plug the wells or remove the well-site equipment, if the well is determined by the commission to be abandoned or ordered by the commission to be plugged, replugged, repaired, or restored;

(7) To enter into contracts and to administer a landowner grant program in accordance with applicable state law; and

(8) To dispose in a commercially reasonable manner at generally recognized market value well-site equipment, including an associated tank battery and production facility equipment, and any amount of hydrocarbons from the well that is stored on the lease, by either or both of the following methods after the well has been determined to be abandoned by the commission:

(A) A plugging contract may provide that the person plugging the well or remediating oil field waste pollution, or both, shall have clear title subject to any prior perfected claim on all well-site equipment and hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or

(B)(i)(a) The well-site equipment, including, but not limited to, an associated tank battery and production facility equipment, hydrocarbons from the well that are stored on the lease, and hydrocarbons recovered during the plugging operation may be sold at a public auction or a public or private sale.

(b) The proceeds from any sale under subdivision (e)(8)(B)(i)(a) of this section shall be deposited in the Abandoned and Orphaned Well Plugging Fund.

(ii) All well-site equipment and hydrocarbons acquired by a person by sale shall be acquired under clear title subject to any prior perfected claims.

~~(e)~~(f) Nothing in this section is to affect any hydrogen sulfide emission standards or ambient air standards enacted by the General Assembly.

SECTION 2. Arkansas Code § 15-71-114(a)(3), concerning permits required for field seismic operations, is amended to read as follows:

(3)(A) The application shall be accompanied by a ~~bond~~ financial assurance acceptable to the commission in the amount of fifty thousand dollars ($50,000) or such larger amount as may be prescribed by the commission not to exceed two hundred fifty thousand dollars ($250,000).

(B) The ~~bond~~ financial assurance shall be executed by the applicant, as principal, and a corporate surety approved by the commission, and shall be conditioned that the permittee shall pay all damages resulting from such seismic operations.

(C) The ~~bond~~ financial assurance shall be maintained at an amount not less than fifty thousand dollars ($50,000) nor more than two hundred fifty thousand dollars ($250,000) as may be set by the commission, so long as the permittee is conducting field seismic operations in the state and until released by the commission.

(D)(i) Any surface owner seeking to recover under ~~such bond~~ a financial assurance as described in subdivisions (a)(3)(A) through (C) of this section for damages caused by the performance of such field seismic operations must file written notice of claim ~~therefor~~ for the damages with the ~~Oil and Gas Commission~~ commission within one (1) year of the date of expiration of the permit for conducting such operations~~;~~.

(ii) ~~provided, however, that such~~ However, the claim shall be subordinate to the rights of the ~~Oil and Gas Commission~~ commission under ~~said bond~~ the financial assurance to secure compliance by ~~said~~ the permittee with the provisions of this section~~, as hereby amended,~~ and the rules and regulations of the commission promulgated ~~thereunder~~ under this section.

SECTION 3. Arkansas Code Title 15, Chapter 71, Subchapter 1 is amended to add ~~an additional~~ section to read as follows:

15-71-115. Abandoned and Orphan Well Plugging Fund.

(a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a special revenue fund to be known as the "Abandoned and Orphan Well Plugging Fund".

(b)(1) All moneys collected under the Abandoned and Orphan Well Plugging Fund shall be deposited into the State Treasury to the credit of the fund as special revenues.

(2) The fund shall also consist of any other revenues as may be authorized by law.

(c) The fund may be used by the Oil and Gas Commission to provide security in the event an oil and or gas well operator fails to perform plugging responsibilities under the provisions of § 15-72-217 or fails to correct well conditions that create an imminent danger to the health or safety of the public, or threaten significant environmental harm or damage to property.

(d) Expenditures from the Abandoned and Orphan Well Plugging Fund may be authorized by the commission through contracts or grants for the payment of plugging costs or the cost of performing corrective work as follows:

(1) If after the commission gives the well operator notice and hearing and finds that an abandoned well must be plugged; that a leaking well must be plugged, replugged, or repaired; or that a well site must be restored, and the well operator fails to perform the required plugging, replugging, repair, or restoration work within the time frame prescribed in the commission order, the commission may authorize Abandoned and Orphan Well Plugging Fund expenditures to plug, replug, or repair the well or wells and to restore the well site in accordance with commission rules; and

(2) If the abandoned well or well site operator cannot be identified or located for purposes of notice and hearing, the commission may administratively determine the well or well site to be orphaned, as defined

by commission rules, and may authorize Abandoned and Orphan Well Plugging Fund expenditures to plug the orphan well and restore the orphan well site.

SECTION 4. Arkansas Code § 15-72-217 is amended to read as follows:

15-72-217. Plugging dry or abandoned well by lessee or operator.

(a) All lessees or operators drilling or operating for crude oil or natural gas within the State of Arkansas shall immediately, in a practical and workmanlike manner, under the supervision of the oil or gas inspector, ~~as hereinafter provided~~ as provided in this section, plug all dry holes or abandoned oil or gas wells ~~in which oil-bearing or gas-bearing strata have been found, in the following manner:~~ in accordance with Oil and Gas Commission plugging rules.

~~(1) Beginning at the bottom, the hole shall be solidly plugged with a substance consisting of one-third (1/3) portion cement and two-thirds (2/3) portion of sand properly mixed with water to a point twenty-five feet (25') above the top level of the oil-bearing or gas-bearing sand. At that point, a seasoned wooden plug two feet (2') in length and the diameter of the hole shall be placed. Thereafter the hole shall be filled solidly with twenty-five feet (25') of sand balings. Then a seasoned wooden plug two feet (2') long and the diameter of the hole shall be placed and driven firmly into the sand balings.~~

~~(2) Should there be more than one (1) oil-bearing or gas-bearing sand in the well, after plugging the bottom sand in the well, as set out in subdivision (1) of this section, the well shall be filled with sand balings to within ten feet (10') of the bottom of the next sand above that last plugged, when this sand and each succeeding sand shall be plugged in the manner set out in subdivision (1) of this section until all of the oil-bearing and gas-bearing sands in the well have been plugged as provided in this section.~~

(b)(1) If after notice and a hearing, the Oil and Gas Commission finds that a well drilled for the exploration, development, storage or production of oil or gas, or as injection, salt water disposal, salt water source, brine injection or disposal has been abandoned as defined by the commission or is leaking salt water, oil, gas, or other deleterious substances into any fresh water formation onto the surface of the land in the vicinity of the well, or creates an imminent danger to the health or safety of the public, the commission shall issue an order that the well be properly plugged, replugged, or repaired to remedy the situation.

(2) If the well operator fails to obey the order within thirty (30) days after the date of the order, then any person authorized by the commission may enter upon the land on which the well is located and plug, replug, or repair the well as may be reasonably required to remedy the condition.

(3)(A) The costs and expenses incurred by the commission and paid with funds from the Abandoned and Orphan Well Plugging Fund shall be a debt due by the well operator to the commission for reimbursement to the Abandoned and Orphan Well Plugging Fund.

(B) The well owner's failure to comply with the commission's order to plug, replug, or repair the well or to repay expenses incurred by the commission to plug, replug, or repair the well is a violation of this chapter and subject to enforcement action or a cessation of operations.

(c) This section does not:

(1) Relieve any well operator otherwise legally responsible from any obligation to plug, replug, or repair a well; or

(2) Limit the authority of the commission to require the proper plugging, replugging, or repair of a well.

(d)(1) Any person who enters upon the land on which the well is located to plug, replug, or repair the well, or who supports or contributes to any such action in accordance with the order of the commission and under contract to the commission shall not be liable for any damages resulting from operations reasonably necessary or proper to plug, replug, or repair the well, except damages to growing crops and improvements.

(2) The person shall not be held to have assumed responsibility for future remedial work on the well or be liable in damages or otherwise for conditions subsequently arising from or in connection with the well.

SECTION 5. Arkansas Code § 15-76-306(c), concerning the authority of the Oil and Gas Commission to regulate brine production, is amended to read as follows:

(c) The commission shall have authority to make, after hearing and notice as ~~hereinafter~~ provided in this section, such reasonable rules, regulations, and orders as may be necessary from time to time in the proper administration and enforcement of this subchapter, including rules, regulations, or orders for the following purposes:

(1) To form brine production units;

(2)(A) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of brine and effluent from one (1) stratum to another;

(B) To prevent the pollution of fresh water supplies by brine and effluent; and

(C) To require reasonable ~~bond~~ financial assurance acceptable to the commission conditioned for the performance of the duty to plug each dry hole or abandoned well;

(3) To require the making of reports showing the location of brine wells utilized for production and of injection wells used for disposal and the filing of logs and drilling records ~~therefore~~ for those wells;

(4) To require the return of the brine to the same formation from which it was produced unless the commission shall authorize the disposal of effluent into one (1) or more other formations upon finding that neither underground damage nor waste shall result therefrom;

(5) To prevent the drowning by brine and effluent of any stratum or part thereof capable of producing oil or gas in paying quantities;

(6) To prevent "blowouts", "caving", and "seepage" in the sense that conditions indicated by these terms are generally understood;

(7) To identify the ownership of all wells utilized for producing brine and of all injection wells and all pipelines, plants, ponds, structures, and storage facilities;

(8) To regulate the "shooting", perforating, and chemical treatment of wells;

(9) To regulate the introduction or injection of effluent and other substances into an aquifer;

(10) To regulate the spacing of wells for the production of brine and injection wells for the introduction of effluent into an aquifer. However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;

(11) To formulate rules and regulations for the proper

transportation of brine from the producing wells to the plant and from the plant to the injection wells and for the maintenance and surveillance of the transportation facilities; and

(12) To prevent, so far as is practical, reasonably avoidable drainage between brine production units.